IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7521 OF 2004

Union of Indian through General Manager, Central Railway, Mumbai CST & another. ...Petitioners

vs.

1.Shri.P.N.Mugle & another ...Respondents.

Mr.T.J.Pandian, for Petitioner.

None for Respondents.

CORAM: A.P.SHAH & S.U.KAMDAR, JJ.

DATED: 17th September,2004

ORAL JUDGEMENT (PER S.U.KAMDAR,J.)

1. The present petition is filed by Union of India challenging the order of Central Administrative Tribunal dated 20th April,2004. By the said order, the tribunal has set aside the order passed by the Petitioner dated 9th January,2002, principally on the ground of violation of principles of natural justice. The tribunal has followed the judgment of Apex Court in the case of "Bhagwan Shukla Vs. Union of India & others; reported in 1994 SCC (L & S) 1320. Some of the brief facts in the present case are as under:-

2. The respondent no.1 was appointed as a Junior Clerk on 9th November,1964 and after certain promotions has ultimately retired as Senior Hindi Officer on 28.2.2002.

3. In the year 1993, the Respondent no.1 was promoted to the post of Assistant Hindi Officer which is Group "B" post. This promotion was given with effect from 10.9.1993. By letter dated 18.3.1997 the post of Assistant Hindi Officer in Solapur Division was upgraded to Senior Hindi Grade officer. To this post, the petitioner was appointed on ad-hoc basis on 29.12.1997 and ultimately, the promotion was confirmed on 30.12.1997. It is from this post that the petitioner has retired on 28.2.2002.

4. Few days prior to his retirement, the petitioner was served with an order dated 9.1.2002 inter alia stating therein that the regularisation of his promotion on the post of Senior Scale Hindi Officer is irregular and the same was given by mistake and thus, the payment of excess salary paid to Respondent no.1 should be recovered. Thus a recovery has been ordered of Rs.75,862/-. This was

on the basis of claim of difference of salary from 30.12.1997 to 31.12.2001. It was further provided in

the said order that the said recovery will be effected from the salary of the petitioner from the month of January,2002 and the balance amount will be adjusted from his retirement dues at the time of his superannuation on 28.2.2002. It is this order of recovery, which has been challenged by Respondent no.1 before Central Administrative Tribunal.

5. The Central Administrative Tribunal has considered the matter in depth. The central administrative tribunal has also come to the conclusion that the order dated 9.1.2002 passed by the Petitioner just a few days before the respondent was to be superannuated, is illegal and unlawful and also in breach of the principles of natural justice. The learned Central Administrative Tribunal has also interpreted circular issued by Railway Board dated 29.8.1990.

6. We have considered the judgement of the tribunal and we are of the opinion that the view taken by the tribunal cannot be held to be illegal, perverse or impossible. The tribunal’s view is

possible or in any event a plausible view. It is an admitted position that the principles of natural justice has not been followed by the petitioner

before passing impugned order which was passed after the period of three years from his actual promotion and just prior to his retirement. We are therefore, of the opinion that the order of Central Administrative Tribunal does not require any interference in the exercise of our writ jurisdiction under Article 226 of Constitution of India. However, while holding so, we make it clear that we have expressed no comments on interpretation placed by the Tribunal of the said circular in the impugned judgement. We make it clear that the said issue is kept open expressly to be determined by the tribunal in an appropriate case. The judgement of the tribunal shall not be cited as a precedent before the benches of the said tribunal. We dispose of the present petition with the aforesaid directions, however, there shall be no order as to costs.

(A.P.Shah, J.)

17.9.2004. (S.U.Kamdar, J)